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10 WELLS FARGO BANK, N.A.

11 UNITED STATES DISTRICT COURT FOR THE
12 NORTHERN DISTRICT OF CALIFORNIA

13 KATHY BATTERSBY,

14 Plaintiff,

15 v.

16 WELLS FARGO BANK, N.A.; and DOES
1 through 50, inclusive,

17 Defendant.

Case No. 15-CV-04865-JCS

**STIPULATION AND PROTECTIVE
ORDER RE CONFIDENTIAL
INFORMATION; [~~PROPOSED~~]
ORDER]**

Complaint Filed: September 22, 2015

1 Plaintiff Kathy Battersby (“Plaintiff”) and Defendant Wells Fargo Bank,
2 N.A. (“Wells Fargo” or “Defendant”), through their respective counsel of record, hereby
3 stipulate as follows:

4 A. Disclosure and discovery activity in this action has involved, involves,
5 and will likely continue to involve, production of confidential, commercially sensitive,
6 proprietary, trade secret, or private information (“Confidential Documents”) for which
7 special protection from public disclosure and from use for any purpose other than litigating
8 this matter would be warranted.

9 B. The parties acknowledge that documents designated as Confidential
10 Documents have already been produced by Defendant, and that all such documents (if
11 properly designated under this Agreement) are governed by the terms of this Agreement as
12 set forth herein. The parties further agree and understand that any previously produced
13 documents will be deemed designated Confidential Documents, as defined below, on the
14 effective date of this Agreement.

15 C. The parties to this Stipulation and Order, and other parties or non-
16 parties in this litigation, each may assert a claim that documents described herein constitute
17 or contain private or confidential information, which claim may be disputed by one or
18 more parties; and

19 D. The parties hereto desire to agree to a protective order for the
20 protection of specified documents produced during the pendency of this action, including
21 those previously produced, and thereafter.

22 THEREFORE, Plaintiff and Defendant, through their respective counsel of
23 record, stipulate and agree as follows:

24 1. Terms. The terms defined in this paragraph shall have the meanings
25 provided. Defined terms may be used in the singular or plural.

26 1.1. “Producing Party” means the party, or person other than a
27 party, being asked to produce or asserting a confidentiality interest in documents
28 designated by that party or person as Confidential Documents.

1.2. "Receiving Party" means that party receiving or requesting production of Confidential Documents.

1.3. "Confidential Documents" means documents pertaining to confidential, commercially sensitive, proprietary, trade secret or private information, which information the Producing Party believes in good faith to be protected under relevant provisions of California law regarding (1) private information of the producing party and/or third parties, (2) confidential, commercially sensitive or proprietary information, (3) information affecting third-party privacy rights of current or former Wells Fargo employees and (4) trade secrets, including all pleadings, motions, affidavits and related papers, all documents produced or exchanged in the course of this action or any settlement negotiations, and all transcripts and testimony given in depositions, in hearings or at trial.

1.4. "Outside" means a person who is not an employee of the Receiving Party, and shall include law firms retained by the Receiving Party.

1.5. "Termination" means the dismissal of this action, or entry of final judgment or expiration of all periods to appeal or seek judicial review of this action.

2. Use of Confidential Documents. All material designated as Confidential Documents may be disclosed only to the following persons:

2.1. the Court and its personnel;

2.2. the parties and their counsel, including investigators and support staffs employed by counsel or the parties;

2.3. witnesses at deposition;

2.4. court reporters or translators;

2.5. persons retained by the parties as experts or consultants, whether designated or being considered for designation; and

2.6. any other person as to whom the parties agree in writing.

No Confidential Document may be, directly or indirectly, in whole or in part, to any individual described in Paragraph 2.5 until the individual has been given a copy of

1 this order and signed a Confidentiality Agreement in the form attached hereto as Exhibit
2 A, which Confidentiality Agreement shall be retained by Outside counsel of record for
3 Receiving Party.

4 3. Except as set forth in this Stipulation and Order, all material
5 designated as Confidential Documents shall be used solely for the purposes of this
6 litigation and shall not be used for any other purpose, including, without limitation, any
7 business or commercial purpose, dissemination to the media, or in a manner that interferes
8 with the privacy rights of current or former Wells Fargo employees. The terms of this
9 Stipulation and Order shall not apply to or restrict the disclosure or use by a Producing
10 Party of the Producing Party's own Confidential Documents.

11 4. Confidential Documents shall be designated specifically by either
12 marking the document or thing as "CONFIDENTIAL AND/OR PROPRIETARY" or by
13 designating, in writing, the identity of the document and the Bates stamp number which
14 has been assigned to it at the time of production or other use. The parties acknowledge and
15 agree that documents designated as Confidential and/or Proprietary (i.e. as Confidential
16 Documents) prior to the execution of this Agreement have been properly designated under
17 this Agreement and subject to the terms herein.

18 5. The inadvertent failure to designate documents as Confidential
19 Documents prior to or at the time of disclosure shall not operate as a waiver of a party's
20 right to designate such documents as Confidential Documents within thirty (30) days after
21 such disclosure, or after notice of such disclosure, or after execution by the party of this
22 Stipulation and Order, whichever is later. In the event that documents are designated as
23 Confidential after disclosure but within the thirty (30) day period allowed in this
24 Paragraph, the Receiving Party shall employ reasonable efforts to ensure that all
25 previously disclosed information is subsequently treated as Confidential Documents
26 pursuant to the terms of this Stipulation and Order.

27 6. Deposition transcripts may be designated as Confidential Documents
28 by indicating on the record at the deposition that the specified part of the testimony

1 (including the entire testimony given or to be given by a witness) and/or all or any part of
2 the document or thing marked for identification at such deposition subject of the
3 provisions of this Stipulation and Order. The Producing Party may, within 30 days after an
4 undesignated deposition transcript is actually received by counsel for each party,
5 specifically designate information contained in the transcript as a Confidential Document,
6 whether or not previously so designated, by notifying all parties in writing of any specific
7 pages and lines of the transcript which contain confidential information. Each party shall
8 attach a copy of such written statement to the face of the transcript and each copy thereof
9 in its possession, custody or control. Insofar as any designation made of the entire
10 testimony or documents, the Producing Party shall use the best practicable efforts to un-
11 designate, as appropriate, portions thereof within 30 days after the transcripts or documents
12 is actually received by the Receiving Party.

13 7. The Receiving Party shall not be obligated to challenge the propriety
14 designation of the Confidential Documents designation at the time made and the failure to
15 do so at that time shall not operate as a waiver of its right to request the Court to determine
16 the propriety of the designation or in any way preclude a subsequent challenge to such
17 designation. If a party disagrees at any stage of these proceedings with the Producing
18 Party's designation of Confidential Documents, the parties shall first try to resolve such
19 dispute in good faith on an informal basis, through reasonable meet and confer discussions.
20 If a dispute cannot be resolved, the Receiving Party may seek appropriate relief from this
21 Court, and the Producing Party shall have the burden of proving that a Confidential
22 Document should be confidential. To the extent a party wishes to challenge the
23 confidential designation of documents produced prior to the execution of this Agreement, a
24 party may do so following the effective date of this Agreement.

25 8. Should any Confidential Documents be disclosed, through
26 inadvertence or otherwise, to any person or in any circumstances not authorized under this
27 Stipulation and Order, then the disclosing party must immediately (a) notify in writing to
28 the Producing Party of the unauthorized disclosures, (b) use its best efforts to retrieve all

1 copies of the Confidential Documents, (c) inform the person or persons to whom
2 unauthorized disclosures were made of all the terms of this Stipulated Protective Order,
3 and (d) request such person or persons to execute the Confidentiality Agreement that is
4 attached hereto as Exhibit A.

5 9. If any party objects at any time to specific application of any
6 provision of this Stipulation and Order, that party may seek to amend such provision.
7 However, before seeking any modification the party shall attempt to resolve the issue with
8 other parties by a stipulated amended order.

9 10. This Stipulation and Order shall not be construed as a waiver by the
10 parties of any objection which might be raised as to the admissibility of any evidentiary
11 material. This Stipulation and Order shall be without prejudice to the rights of any person
12 to oppose production of any information on any proper ground.

13 11. Where any Party to the Stipulation and Order wishes to include any
14 Confidential Document (or information derived therefrom) in any motion or other filing,
15 that Party shall contact the other to meet and confer on the inclusion of such
16 documents/information in the motion or filing. During such meet and confer discussions,
17 the Parties will discuss mutually agreeable means of using said Confidential Document(s)
18 (or information derived therefrom) without having to seal all or parts of relevant motions
19 or filings. By way of examples only, the Parties may meet and confer on mutually
20 agreeable redactions, or mutually agreeable exceptions, to avoid the need for a motion to
21 seal.

22 12. Where no mutual agreement is possible under Paragraph 11, above,
23 and any Confidential Document (or information derived therefrom) is included in any
24 motion or other proceeding governed by the Federal Rules of Evidence, the Parties and any
25 involved non-party shall follow those rules.

26 13. Except as filed with the Court in accordance with this Stipulation and
27 Order, and as produced in deposition pursuant to this Stipulation and Order, all documents
28 and things designated Confidential Documents shall be maintained by the parties, their

1 counsel, or a person authorized to view Confidential Documents under Paragraph 2, and
2 who has executed the appropriate Confidentiality Agreement. Within 30 days after
3 Termination of this action, the original and all copies of each document and thing
4 produced by the Producing Party to a Receiving Party or given to any other person
5 pursuant to this Stipulation and Order, which contains Confidential Documents, shall be
6 returned for destruction to the counsel of record for the Producing Party. The Parties agree
7 that the foregoing provision does not apply to notes, summaries, digests and synopses of
8 the Confidential Documents which would be protected by the attorney-work product
9 doctrine or attorney-client privilege, as well as documents required to be retained as part of
10 a client file, but agree that such privileged documents will continue to be treated as
11 containing confidential information. After Termination of this action, counsel of record
12 for the Receiving Party shall retain all Confidentiality Agreements signed pursuant to
13 paragraph 2 above, and shall then deliver a copy thereof to the Producing Party on request
14 at any time thereafter.

15 14. Insofar as the provision of this Stipulation and Order restrict the use
16 or communication of any document or information produced hereunder, this Stipulation
17 and Order shall continue to be binding after the Termination of this action and the Court
18 shall retain jurisdiction over all persons and parties bound by this Stipulation and Order for
19 the purposes of its enforcement.

20 15. Nothing in this Stipulation and Order is intended to be construed as
21 authorizing or encouraging a Receiving Party in this action to disobey a lawful subpoena
22 issued in another action.

23 **IT IS SO STIPULATED.**
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Dated: February ___, 2016

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By /S/

ELLEN M. BRONCHETTI
ALEXANDRA HEMENWAY

Attorneys for Defendant
WELLS FARGO BANK, N.A.

LAW OFFICES OF RANDAL M. BARNUM

By /S/

RANDAL M. BARNUM
CARRIE H. CROXALL
LINDSAY R. BATCHA

Attorneys for Plaintiff
KATHY BATTERSBY

~~PROPOSED~~ PROTECTIVE ORDER

Pursuant to and in accordance with the foregoing Stipulation Re Confidential Information (“Stipulation”), submitted by the parties to this Court, and good cause appearing for the request, the Court hereby GRANTS the parties’ request and enters an order that any documents or information designated as confidential (as provided by the parties’ Stipulation) shall be subject to the provisions of their Stipulation and this Protective Order.

IT IS SO ORDERED.

Dated: February 22, 2016

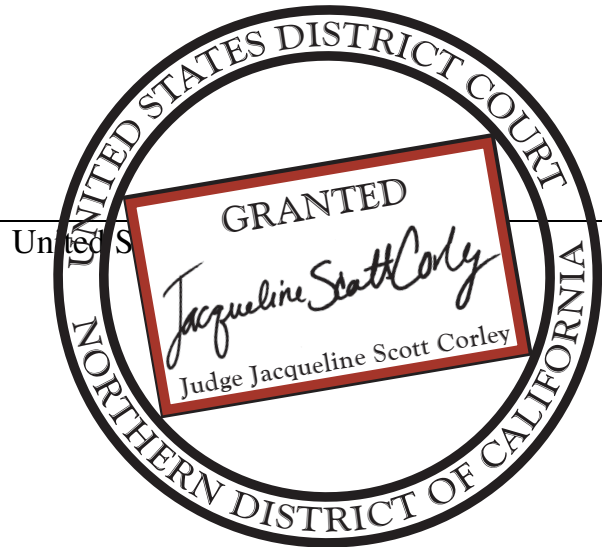


EXHIBIT A

CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS

I hereby acknowledge that I, _____[NAME],
 _____[POSITION AND
 EMPLOYER], am about to receive Confidential Documents supplied in connection with
 the Proceeding, *Kathy Battersby v. Wells Fargo Bank, N.A.*, Case No. 15-CV-04865-JCS.
 I certify that I understand that the Confidential Documents are provided to me subject to
 the terms and restrictions of the Stipulation and Protective Order filed in this Proceeding.
 I have been given a copy of the Stipulation and Protective Order; I have read it, and I
 agree to be bound by its terms. I understand that the Confidential Documents, as defined
 in the Stipulation and Protective Order, including any notes or other records that may be
 made regarding any such materials, shall not be Disclosed to anyone except as expressly
 permitted by the Stipulation and Protective Order. I will not copy or use, except solely for
 the purposes of this Proceeding, any Confidential Documents obtained pursuant to this
 Stipulation and Protective Order, except as provided therein or otherwise ordered by the
 Court.

I further understand that I am to retain all copies of all Confidential Documents
 provided to me in the Proceeding in a secure manner, and that all copies of such materials
 are to remain in my personal custody until termination of my participation in this
 Proceeding, whereupon the copies of such materials will be returned to counsel who
 provided me with such materials.

I declare under penalty of perjury, under the laws of the State of California, that the
 foregoing is true and correct.

DATED: _____ BY: _____

Signature

 Address, City, State, Zip